



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0128/P1

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Bu Thursday
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Friday
10/19 a.m.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT,

TO 2007 SENATE BILL 107

Gen

1 AN ACT ...; relating to: regulating cable television and video service providers
2 and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 11.01 (17g) of the statutes is amended to read:
4 11.01 (17g) "Public access channel" means a channel that is required under a
5 franchise granted or renewed under s. 66.0419 (3) (b) by a city, village, or town to a
6 cable operator, as defined in s. 66.0419 (2) (b), and that is used for public access
7 purposes, but does not include a channel that is used for governmental or educational
8 purposes.

History: 1973 c. 334; 1975 c. 93, 199; 1977 c. 187, 427; 1979 c. 260, 263; 1979 c. 328 ss. 12 to 28, 146; 1979 c. 355 s. 31; 1983 a. 484, 491; 1985 a. 303; 1987 a. 370, 391; 1989 a. 192; 1993 a. 112; 1999 a. 83; 2001 a. 103, 109; 2005 a. 177.

9 SECTION 2. 25.95 of the statutes is amended to read:

1 **25.95 Universal service fund.** There is established a separate nonlapsible
2 trust fund designated as the universal service fund, to consist of all contributions
3 received under s. 196.218 (3) and deposits by the public service commission under s.
4 66.0420 (9) (c) 5.

History: 1997 a. 27.

5 **SECTION 3.** 60.23 (4) of the statutes is repealed.

6 **SECTION 4.** 66.0419 (3) (intro.) of the statutes is amended to read:

7 66.0419 (3) FRANCHISES. (intro.) ~~—A—~~ Except as provided in s. 66.0420, a
8 municipality may operate or regulate a cable television system and in such operation
9 and regulation may, without limitation because of enumeration:

History: 1985 a. 29; 1991 a. 296; 1999 a. 150 s. 241; Stats. 1999 s. 66.0419; 2003 a. 278, 327. ✓

****NOTE: Except as provided in s. 66.0420, I think that s. 66.0419 should remain
in effect because municipalities will retain the authority to regulate cable operators who
elect to remain subject to municipal authority.

10 **SECTION 5.** 66.0419 (3) (b) of the statutes is amended to read:

11 66.0419 (3) (b) Grant, renew, or revoke one or more franchises authorizing the
12 construction and operation of a cable television system and govern the operation of
13 any franchise granted.

History: 1985 a. 29; 1991 a. 296; 1999 a. 150 s. 241; Stats. 1999 s. 66.0419; 2003 a. 278, 327.

****NOTE: The above makes it clear that a municipality may renew the cable
franchise of an incumbent cable operator that elects to continue to be regulated by the
municipality.

14 **SECTION 6.** 66.0419 (4) of the statutes is amended to read:

15 66.0419 (4) CONSTRUCTION. The authority granted under this section to a
16 municipality to operate and regulate a cable television system is in addition to any
17 other power which the municipality has and the authority of a municipality to
18 operate and regulate a cable television system is limited only by the express
19 language of this section and s. 66.0420.

History: 1985 a. 29; 1991 a. 296; 1999 a. 150 s. 241; Stats. 1999 s. 66.0419; 2003 a. 278, 327.

20 **SECTION 7.** 66.0420 of the statutes is created to read:

1 **66.0420 Video service. (1) LEGISLATIVE FINDINGS.** The legislature finds all
2 of the following:

3 (a) The economy in the state of Wisconsin will be enhanced by investment in
4 new communications and cable and video services, including broadband service
5 facilities and fiber optic and Internet protocol technologies.

6 (b) Cable and video services bring important daily benefits to Wisconsin
7 consumers by providing news, education, and entertainment.

8 (c) Competitive cable or video service providers are capable of providing new
9 video programming services and competition to Wisconsin consumers and of
10 decreasing the prices for video programming services paid by Wisconsin consumers.

11 (d) Although there has been some competitive entry into the facilities-based
12 video programming market since s. 66.0419 was enacted, further entry by
13 facilities-based providers could benefit consumers, if cable and video services are
14 equitably available to all Wisconsin consumers at reasonable prices.

15 (e) The provision of competitive cable and video services is a matter of statewide
16 concern that extends beyond the boundaries of individual municipalities. However,
17 public rights-of-way are limited resources over which a municipality has a custodial
18 duty and ownership interest to ensure that the public rights-of-way are used,
19 repaired, and maintained in a manner that best serves the public interest.

+
****NOTE: The 1st sentence is intended to address concerns regarding municipal
home rule under art. XI, s. 3 of the Wisconsin Constitution. Therefore, the following
language in the proposal is not necessary: "The provisions of [s. 66.0420] are a limitation
of home rule powers under the Wisconsin Constitution." Also, the foregoing language is
not appropriate because a statute cannot impose limits on the constitution.

X
****NOTE: The proposal also includes the following, which is not necessary:
"Nothing in this section shall be construed to limit or deny a [municipality]'s power to
tax as set forth in the Wisconsin Constitution."

(f) This section is intended to enable rapid and widespread entry by competitive cable or video service providers which will bring to Wisconsin consumers the benefits of video competition, including providing consumers with more choice, lower prices, higher speed and more advanced Internet access, more diverse and varied news, public information, education, and entertainment programming; and will bring to this state and municipalities the benefits of new infrastructure investment, job growth, and innovation in broadband service and Internet protocol technologies and deployment.

(g) This section is intended to best ensure equal treatment and parity among different providers of cable and video services and different technologies for providing such services.

****NOTE: The proposal also includes the following, which I did not include: "Providing an incumbent cable or video service provider with the option to secure a state-issued authorization through the termination of existing cable franchises between incumbent cable and video service providers and any local franchising authority is part of the new regulatory framework established by this section." The foregoing statement merely describes what the section does. Therefore, it doesn't elaborate on legislative intent.

(2) DEFINITIONS. In this section:

****NOTE: The proposal's definition of "access" is moved to sub. (9) (b).

****NOTE: The proposal defines "basic local exchange service area" as follows, but the term is not used in the proposal, so I did not include it: "the area on file with the commission in which a telecommunications video service provider provides basic local exchange service, as defined in s. 196.01 (1g)."

****NOTE: The proposal defines "local franchising authority" as follows, but it is only used in a legislative finding that I did not include in the substitute amendment: "the municipality that has or requires a franchise with a cable operator or a provider of cable or video services to construct or operate a cable or video system or to offer cable or video services under this [section]."

****NOTE: The proposal defines "interim cable operator" as follows, but, as explained in the Note following sub. (3) (a) 1., I did not use that term: "an incumbent cable operator that elects to continue to provide cable service under a cable franchise...."

****NOTE: The proposal defines "institutional network" as follows, but the term is not used in the substitute amendment: "a network that connects governmental, educational, and community institutions."

****NOTE: The proposal defines "large telecommunications video service provider" as follows, but the term is not used in the substitute amendment: "a telecommunications

video service provider that has more than 500,000 basic local exchange access lines in this state."

****NOTE: The proposal defines "service" as follows: "the provision of cable or video service to subscribers and the interaction of subscribers with [a video service franchisee]." I did not include the definition because "service" is used in the substitute amendment in contexts in which the definition does not apply. Perhaps the ideas included in the definition should be incorporated in other more specific definitions. Let me know.

****NOTE: The proposal defines "service provider fee" as follows: "the amount due from a person that is authorized to offer cable or video service pursuant to this section." I do not use that term, but defined instead "video service franchise fee" and "PEG support fee."

****NOTE: The proposal defines "state agency," but does not use that term.

****NOTE: The proposal also defines "video service provider" as "a person, including an incumbent cable operator, who is issued a video service franchise or an affiliate, successor, or assign of such a person." I do not use that term in s. 66.0420. However, "cable or video provider" is defined and used in s. 100.209.

1 (a) "Affiliate", when used in relation to any person, means another person who
2 owns or controls, is owned or controlled by, or is under common ownership or control
3 with such person.

4 (b) "Basic cable or video service" means any cable or video service offering or
5 service tier which includes the retransmission of local television broadcast signals.

6 (c) "Broadband service" means a high-speed service connection to the public
7 Internet that is capable of supporting, in at least one direction, a speed in excess of
8 200 kilobits per second to a network demarcation point at a subscriber's premises.

XXXXNOTE: "Broadband service" is used only in subs. (1) (a) and (f) and (9) (c) 5. A
X different term, "two-way broadband Internet capability," is used in sub. (9) (b), but not
one term and probably should be defined. Depending on your intent, you could define only
term and use it consistently.

9 (d) "Cable franchise" means a franchise granted under s. 66.0419 (3) (b).

10 (e) "Cable operator" has the meaning given in 47 USC 522 (5).

XXXXNOTE: "Cable operator" is only used in sub. (6). In the proposal, the term is also
used in the definition of "local franchising authority." Perhaps the references to "cable
operator" in the foregoing subsections should be changed to refer to "incumbent cable
operator"?

XXXXNOTE: FYI under 47 USC 522 (5), "cable operator" is defined as "any person or
group of persons (A) who provides cable service over a cable system and directly or
through one or more affiliates owns a significant interest in such cable system, or (B) who
otherwise controls or is responsible for, through any arrangement, the management and
operation of such a cable system."

1 (f) "Cable service" has the meaning given in 47 USC 522 (6).

****NOTE: FYI under 47 USC 522 (6), "cable service" is defined as "(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service."

2 (g) "Cable system" has the meaning given in 47 USC 522 (7).

****NOTE: FYI under 47 USC 522 (7), "cable system" is defined as "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act [47 USCS §§ 201 et seq.], except that such facility shall be considered a cable system (other than for purposes of section 621(c)) [47 USCS § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title [47 USCS § 573]; or (E) any facilities of any electric utility used solely for operating its electric utility systems."

3 (h) "Commission" means the public service commission.

4 (i) "Competitive cable or video service provider" means a person that is
5 providing or seeks to provide cable or video service in an area where there is at least
6 one incumbent cable operator.

****NOTE: The above term is only used in sub. (1) (c) and (f), which are legislative findings. In addition, another term, "competitive cable and video services" is used in sub. (1) (e). That term is not defined, but a definition may not be necessary.

7 (j) "Designated market area" means a designated market area, as determined
8 by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index
9 Directory and Nielsen Station Index United States Television Household Estimates
10 or any successor publication, except for any portion of such area that is outside the
11 state.

****NOTE: The above may be confusing because it refers to a publication with a specific date, but it also refers to any successor publication. Also, is the 1999-2000 version the most recent version of the publication?

****NOTE: The exception is my substitute for the following: "For any designated market area that crosses state lines, only households in the portion of the designated market area that is located within a video service franchisee's telecommunications

service area in the state where access to video service will be offered shall be considered.”
Is that okay? ✓

1 (jm) “Exchange” means a geographic area defined by the commission.

****NOTE: I added the above definition. However, I found the proposal’s references
to exchanges confusing.

2 (k) “Household” means any individual or group of individuals who are living
3 together as one economic unit. ✓

****NOTE: As requested, I adapted the definition in s. 16.27 (1) (c), instead of using
the definition in the proposal.

4 (L) “Incumbent cable operator” means a person that, immediately before the
5 effective date of this paragraph.... [revisor inserts date], provided cable service in a
6 municipality under a cable franchise. ✓

7 (m) “Issued” means, with respect to a video service franchise, issued or
8 considered to be issued by the commission. ✓

9 (n) “Low-income household” means a household whose aggregate individual
10 and group income is not more than 150% of the poverty line as determined under 42
11 USC 9902 (2). ✓ percent

****NOTE: As requested, I adapted the definition in s. 16.957 (1) (m), instead of using
the definition in the proposal. ✓

12 (o) “Municipality” means a city, village, or town.

****NOTE: To be consistent with s. 66.0419, I used “municipality” throughout the
substitute amendment, instead of “local unit of government.” ✓

13 (om) “Municipally regulated cable operator” means an incumbent cable
14 operator that has not elected to terminate its cable franchise under sub. (3) (b) 1. b. ✓

****NOTE: I created the above definition, which is used throughout this section, as
well as in the amendment of s. 18.017 (1) 2 ✓

15 (p) “PEG channel” means a channel designated for noncommercial public,
16 educational, or governmental use. ✓

17 (q) “PEG channel manager” means a person authorized by a municipality to
18 manage PEG channels. ✓

****NOTE: I created the above definition (it is not in the proposal).

1 (qm) "PEG support fee" means a fee required under sub. (7) (b) 1.

****NOTE: The above definition is not in the proposal.

2 (r) "Public rights-of-way" means the areas on, below, or above a public
3 roadway, highway, street, public sidewalk, alley, waterway, or utility easements
4 dedicated for compatible uses.

X ****NOTE: What is ^{the} grammatical relationship of "utility easements" to the rest of the sentence? What is a "compatible" use?

5 (s) "Service tier" means a category of video service for which a separate rate is
6 charged.

****NOTE: The proposal sometimes uses "tier" instead of "service tier," so I changed "tier" to "service tier" throughout this substitute amendment.

7 (t) "Telecommunications service area" means the area designated by the
8 commission as the area in which a telecommunications company was obligated to
9 provide non-competitive local telephone service.

****NOTE: The above should be revised. Should "telecommunications company" (an undefined term) be replaced with "telecommunications provider" or "telecommunications utility" as defined in s. 196.01? Also, why is the past tense "was" used? Should the above refer to a designation in effect on the effective date of the substitute amendment?

10 (u) "Video programming" has the meaning given in 47 USC 522 (20).

****NOTE: FYI under 47 USC 522 (20), "video programming" is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

11 (v) "Video service" means video programming and subscriber interaction, if any,
12 that is required for the selection or use of such video programming services, and
13 which is provided through wireline facilities located at least in part in the public
14 rights-of-way without regard to delivery technology, including Internet protocol
15 technology. "Video service" does not include any video programming provided by a
16 commercial mobile service provider, as defined in 47 USC 332 (d), or any video
17 programming provided solely as part of, and via, a service that enables users to

1 access content, information, electronic mail, or other services offered over the public
2 Internet.

✂ ***NOTE: In ^{the} 1st sentence, "such" programming refers to what?

***NOTE: Is the reference to "public" Internet okay?

***NOTE: The difference between "cable service" and "video service" is that "cable service" involves the one-way transmission of programming. If so, "cable service" is a species of "video service." As a result, you may want to consider changing all references in this substitute amendment to "cable or video service" to read simply "video service." Let me know what you think.

3 (w) "Video service area" means, with respect to a video service franchisee, the
4 geographic area designated by the video service franchisee in its application for a
5 video service franchise as the geographic area in which it will offer cable or video
6 services during the period of its video service franchise.

***NOTE: I use "video service area" instead of "footprint" throughout the draft. Note also that the proposal's definition of "footprint" includes substantive requirements that I put in sub. (4) (b).

7 (x) "Video service franchise" means a franchise issued by the commission under
8 sub. (4) (g) 1.

***NOTE: I use the above term, rather than "state-issued authorization" because I think the above term is more descriptive.

9 (xm) "Video service franchise fee" means a fee required under sub. (7) (c).

***NOTE: The above is not in the proposal.

10 (y) "Video service franchisee" means a person issued a video service franchise
11 by the commission.

***NOTE: I used the above term, rather than "holder," because I think the above term is more descriptive.

12 (z) "Video service network" means wireline facilities, or any component thereof,
13 located at least in part in public rights-of-way that deliver video service, without
14 regard to delivery technology, including Internet protocol technology or any other
15 technology. "Video service network" includes a cable system.

***NOTE: I changed all references in the proposal to "network," "cable network," or "video network" to "video service network." However, I did not change references to "telecommunications network."

1 (3) AUTHORITY TO PROVIDE VIDEO SERVICE. (a) *Public rights-of-way*. 1. Except
2 for a municipally regulated cable operator, no person may provide cable or video
3 service in this state, or use the public rights-of-way for installing or constructing
4 facilities for the provision of cable or video service, unless the commission has issued
5 a video service franchise to the person.

****NOTE: The proposal's exception applies to an "interim cable operator." However, I decided not to use that term (and deleted the corresponding definition) because a person could elect to continue to operate under a municipal franchise in perpetuity. Such a person would not be operating on an "interim" basis. Instead, I created a definition for "municipally regulated cable operator."

****NOTE: The proposal also requires a person to give notice under a cross-referenced provision, but leaves the cross-reference blank. I couldn't determine the cross-reference, and perhaps it is not necessary.

6 2. This section does not affect a municipality's authority under s. 187.017 (1)
7 to grant permits for the use of public rights-of-way to install or construct facilities
8 to provide cable or video service. No municipality shall be liable for denial or delay
9 of a permit prior to the issuing of a video service franchise by the commission.

****NOTE: I'm not sure whether the 1st sentence is necessary. Also, the limitation of liability in the 2nd sentence should probably be clarified.

10 (b) *Incumbent cable operators*. 1. Upon the expiration of an incumbent cable
11 operator's cable franchise, the incumbent cable operator may do one of the following:

12 a. Apply to the municipality that granted the cable franchise for renewal of the
13 cable franchise under s. 66.0419 (3).

14 b. Terminate the cable franchise and apply to the commission for a video service
15 franchise under sub. (4). At least 180 days before making an application under sub.
16 (4), the incumbent cable operator shall provide advance notice to the commission, the
17 municipality that granted a cable franchise to the incumbent cable operator, and the
18 municipality's PEG channel manager. Termination of the cable franchise shall be

1 effective on the date that ^{the} commission issues a video service franchise to the
2 incumbent cable operator.

3 2. An incumbent cable operator that elects to terminate its cable franchise shall
4 do all of the following:

5 a. Pay to the municipality that granted the cable franchise and any PEG
6 channel manager any accrued but unpaid fees that are due under the cable franchise.
7 Such fees must be remitted before the 46th day after the date that termination of the
8 cable franchise is effective. If the incumbent cable operator has a credit for any fees
9 due under the cable franchise that the incumbent cable operator has prepaid, the
10 incumbent cable operator may deduct the amount of the credit from any future PEG
11 support or video service franchise fees that the incumbent cable operator is required
12 to pay to the municipality.

****NOTE: The proposal refers to "future fees," but I used "future PEG support or video service franchise fees."

13 b. Pay to the municipality that granted the cable franchise and the
14 municipality's PEG channel manager, at the time that they would have been due, all
15 monetary payments for PEG channels that would have been due during the
16 remaining term of the cable franchise had it not been terminated by the incumbent
17 cable operator. All payments made by an incumbent cable operator under this subd.
18 2. b. may be credited against any PEG support or video service franchise fees that
19 the incumbent cable operator otherwise owes to the municipality.

****NOTE: I added more detail to the last sentence, but I think it needs further clarification. Also, instead of referring to "fees," I refer to "PEG support or video service franchise fees." In addition, should "may" be changed to "shall"?

20 3. An incumbent cable operator that elects to terminate its cable franchise, and
21 any successor ⁱⁿ interest, is required to provide access to cable or video services

1 within the municipality that granted the cable franchise at the same levels required
2 by the municipality on the effective date of this subdivision [revisor inserts date].

***NOTE: What does "at the same levels" mean? Is the above inconsistent with the other provisions of the substitute amendment dealing with access?

3 (c) *Video service franchisees.* 1. The commission shall be the franchising
4 authority for a video service franchisee with regard to the video service franchisee's
5 video service area. Notwithstanding any other provision of this section, a video
6 service franchisee that uses telecommunications facilities to provide cable or video
7 service is not obligated to provide cable or video service outside the video service
8 franchisee's telecommunications service area.

***NOTE: I'm not sure what is accomplished by the "video service area" limitation in the 1st sentence. Also, what's the purpose of the 2nd sentence?

9 2. A video service franchisee is not be subject to any other franchise obligations
10 under state law, except as provided in this section. Except as provided under this
11 section, neither the commission nor any municipality may require a video service
12 franchisee to obtain a separate franchise or pay any franchise fee on cable or video
13 service.

***NOTE: I'm not sure why the above subdivision is necessary. Also, what is a "franchise obligation"?

14 (4) VIDEO SERVICE FRANCHISE. (a) *Application; affidavit.* An applicant for a
15 video service franchise shall submit an application to the commission that includes
16 a completed affidavit signed by an officer or general partner of the applicant that
17 affirms all of the following:

18 1. That the applicant has filed or will timely file with the federal
19 communications commission all forms required by that agency in advance of offering
20 cable or video service in this state.

1 2. That the applicant agrees to comply with all applicable federal and state
2 statutes, rules, and regulations.

3 3. That the applicant agrees to comply with all applicable regulations of a
4 municipality.

5 (b) *Application; video service area.* 1. An application under par. (a) shall
6 include an exact description of the video service area and identify the number of
7 low-income household^s within the video service area. The video service area shall be
8 described in terms of one of the following:

9 a. Exchanges.

10 b. A collection of United States Census Bureau 13-digit block numbers.

11 c. Geographic information system digital boundaries meeting or exceeding
12 national map accuracy standards, if the area is not large enough to be described as
13 specified in subd. 4. a. or 4. b.

****NOTE: What is a national map accuracy standard? Who determines the standards?

X ****NOTE: As drafted, I think an applicant get^s to choose which terms it will use to describe the video service area. Is that okay?

14 d. Municipalities.

15 2. If the applicant is an incumbent cable operator[✓] that seeks to offer cable or
16 video service within the jurisdiction of one or more municipalities that have issued
17 a cable franchise to the applicant, the video service area described under subd. 1.
18 must consist of an area no smaller than the aggregate of the service areas under each
19 cable franchise issued by a municipality in which the incumbent cable operator seeks
20 to offer cable or video service.

X ****NOTE: The proposal also contains the following, which I didn't include because it duplicates language in sub. (3) (b) 3.: "If an applicant is a[✓] an incumbent cable operator, the incumbent cable operator and any successor^s in interest shall be obligated to provide access to cable services or video services within any local units of government at the same

X levels required by the local franchising authorities for the local unit of government on the effective date of this Act...."

1 (c) *Application; other requirements.* An application under par. (a) shall contain
2 all of the following:

3 1. The location and telephone number of the applicant's principal place of
4 business within this state.

5 2. The names of the applicant's principal executive officers who are responsible
6 for communications concerning the application and the services to be offered
7 pursuant to the application.

8 3. The applicant's legal name and any name or names under which the
9 applicant does or will provide cable or video services in this state.

10 4. A certification that the applicant concurrently delivered a copy of the
11 application to each municipality that includes all or any part of the video service area
12 described under par. (b) that is within the jurisdictional boundaries of such
13 municipality.

14 5. The expected date that the applicant will initially offer cable or video service
15 service in the video service area described under par. (b). If a video service franchisee
16 does not offer cable service or video services within three months after the expected
17 date, the video service franchisee shall amend its application to update the expected
18 date and explain the delay in offering cable or video service.

19 6. Adequate assurance that the applicant possesses the financial, managerial,
20 legal, and technical qualifications necessary to construct and operate the proposed
21 system, promptly repair any damage to the public rights-of-way caused by the
22 applicant, and pay the cost of removal of its facilities. To accomplish the
23 requirements under this subdivision, the applicant may, at the time the applicant

1 seeks to use the public rights-of-way in a municipality, be required to post a bond,
2 produce a certificate of insurance, or otherwise demonstrate its financial
3 responsibility.

****NOTE: Regarding the 2nd sentence, who can require an applicant to post a bond, etc.? Under the proposal, it appears that the state or municipality may. Which state entity should have this power? The PSC or DOJ?

X ****NOTE: Shouldn't the 2nd sentence be moved to another part of the substitute amendment? Bonding and other requirements might not apply until after the PSC considers an application and grants a video service franchise. Therefore, the 2nd sentence doesn't really apply to applications.

4 7. The applicant's general standards related to customer service ~~that are~~
5 ~~required~~ ^{established} under s. 100.209 (3).

X ****NOTE: The proposal requires the above, plus any other standards required under state law and rules. However, it seems to me that the relevant standards are stated in s. 100.209 (3). Therefore, I do not refer to other standards in the above. Is that okay?

6 (d) *Confidentiality*. Information included in an application under par. (a), or
7 subsequently reported to the commission by a video service franchisee, shall be
8 subject to the commission's rules under s. 196.135 (2), except that the commission
9 may not treat as confidential information regarding the location of video services
10 that have been or are being offered to the public or aggregate information included
11 in reports required under this section.

X ****NOTE: Where are video service "located"? That idea might have to be clarified.

****NOTE: I'm not sure what "aggregate" means with respect to "aggregate information."

12 (e) *Internet posting*. The commission shall post all applications for video service
13 franchises on its Internet website no later than 5 business days after receiving an
14 application.

****NOTE: Does the posting on the Internet conflict with any confidential handling required under the PSC's rules?

15 (f) *Completeness notice*. No later than 15 business days after receiving an
16 application for a video service franchise, the commission shall notify the applicant

1 whether the application is complete. If the application is not complete, the
2 commission shall state in its notice the reasons the application is incomplete, and the
3 applicant may resubmit the application.

4 (g) *Issuance.* 1. No later than 30 business days after the commission's receipt
5 of a complete application, the commission shall issue a video service franchise to the
6 applicant. If the commission does not notify an applicant regarding the completeness
7 of the application before the deadline specified in par. (f), or the commission does not
8 issue a video service franchise to an applicant before the deadline under this
9 paragraph, the commission is considered to have issued a video service franchise to
10 the applicant on the 30th business day after the commission receives the application.

****NOTE: The proposal also provides that the video service franchise must contain the following: 1) a grant of authority to provide cable or video service in the service area footprint as requested in the application, subject to the laws of the state and the ordinances, rules and regulations of the municipality; 2) a grant of authority to use, occupy, and construct facilities in the public rights-of-way for the delivery of cable or video service in the service area footprint, subject to the laws, ordinances, rules or regulations of this state and municipalities; and 3) a statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant, its affiliated entities or its successors-in-interest. I did not include the foregoing because I think it is redundant. Don't other parts of the substitute amendment impose these requirements on video service franchisees? If so, why is it necessary to repeat them in the video service franchise itself?

11 2. No later than 3 business days after issuing a video service franchise to an
12 applicant, the commission shall notify each municipality whose jurisdictional
13 boundaries include any part of the video service area described by the applicant
14 under par. (b).

15 (h) *Transfer.* 1. A video service franchisee may transfer its video service
16 franchise to any successor-in-interest if the successor-in-interest submits, no later
17 than 15 business days before completion of the transfer, a notice of the transfer to the
18 commission and each municipality whose jurisdictional boundaries include any part
19 of the video service area.

****NOTE: The proposal's transfer requirements are confusing. The proposal says that the successor~~in~~ interest must submit an application to the PSC and that the transfer is not effective until the PSC approves the application. What type of application must be submitted? If the application is the same application required under sub. (4), you are requiring the successor~~in~~ interest to reapply for a video service franchise, and you aren't really allowing for the transfer of the video service franchise. In addition, the proposal says that no further commission action is required for the transfer. If no further commission action is necessary, why is an application necessary? Finally, the proposal says that the transfer may occur only if the successor~~in~~ interest is not in violation of this section or any federal, state, or local law, ordinance, rule, or regulation. If the PSC can't take further action on the transfer, who determines whether there are any such violations?

1 2. A municipality or the department of justice may bring an action to prohibit
2 a video service franchisee from transferring its video service franchise to a
3 successor~~in~~ interest. A court shall prohibit the transfer if any of the following
4 apply:

****NOTE: The PSC is not allowed to bring an action described above. I assume that is okay, because DOJ, not the PSC, has enforcement authority. Is that okay?

5 a. The video service franchisee has committed a material and continuing
6 violation of this section.

****NOTE: The proposal refers to a material and continuing "breach," which I assume is a material and continuing "violation." Also, a court will have to determine whether a violation is "material." In addition, what exactly does "continuing" mean? If at any time the violation ceases, should a court be precluded from prohibiting the transfer?

****NOTE: Should any deadlines apply to the filing of a court action?

7 b. The successor~~in~~ interest has exhibited a pattern of noncompliance with
8 customer service standards.

9 c. The successor~~in~~ interest is insolvent.

10 3. If a video service franchisee transfers its video service franchise to a
11 successor~~in~~ interest when there are violations of this section or of any federal,
12 state, or local law, ordinance, rule, or regulation, the successor~~in~~ interest is subject
13 to three times the forfeitures under sub. (11).

****NOTE: Sub. (11) refers to violations by a video service franchisee. As a result, forfeitures under sub. (11) cannot apply to a successor~~in~~ interest. How do you want to address this issue? Also, there might be due process issues regarding penalizing a successor~~in~~ interest for violation committed by another party.

****NOTE: The above refers to "when there are violations," but does not specify who has committed the violations. That issue should be clarified.

****NOTE: The reference to "any" federal, state, or local law, etc., is pretty broad.

(i) *Termination; video service area modification.* 1. Except as provided in subd. 2., a video service franchisee may terminate its video service franchise or modify its video service area by submitting a notice of the termination or modification to the commission and each municipality whose jurisdictional boundaries include any part of the video service area. The commission may not take any action regarding the notice.

2. A video service franchisee may not discriminate against potential residential subscribers because of the race or income of the residents in the local area in which the residents reside by terminating its video service franchise or modifying its video service area. A video service franchisee may not terminate its video service franchise or modify its video service area if the termination or modification results in an area in which no cable service or video service is available from any provider.

****NOTE: I'm not sure I understand what is prohibited in the 1st sentence. What would constitute such discrimination?

****NOTE: In the 2nd sentence, what constitutes an "area"?

(j) *Expiration and renewal.* A video service franchise expires 10 years after the date that the commission issues the franchise. Upon expiration, a video service franchisee shall reapply for a video service franchise.

****NOTE: Suspension or revocation of a video service franchise is addressed in sub. (10) (b). See the NOTE following sub. (10) (b).

(k) *Commission expenses.* The commission shall bill an applicant or video service franchisee under s. 196.85 (1) any expense incurred by the commission with respect to an application or any other matter regarding the applicant or video service franchisee.

****NOTE: The proposal also includes the following language, which I did not include in this substitute amendment because I don't think that it is necessary: "The

commission's authority to administer this section is limited to the powers and duties explicitly provided under this section. The commission's authority under this section does not include or limit the powers and duties that the commission has under the other law. Nothing in this section may be construed to limit the powers and duties of the commission under current law. The commission shall not have the authority to limit or expand the obligations and requirements provided in this section, or to regulate or control a person to the extent that person is providing cable or video service except as provided in this section." Please let me know if you think the foregoing language is necessary.

- 1 (5) PEG CHANNELS. (a) *Channel capacity; number of channels.* 1. Except as
2 provided in subd. 2., a municipality whose jurisdiction lies within the video service
3 area of a video service franchisee may require the video service franchisee to do all
4 the following, and the video service franchisee shall take any required action no later
5 than 90 days after the municipality notifies the video service franchisee of the
6 requirement:

****NOTE: The proposal does not clarify which municipalities can make the requests. Is my clarification okay? Also note that the proposal conditions a municipality's ability to impose the requirements on the municipality's having received notice by a video service franchisee under sub. (7)(b). I'm not sure why a municipality's authority should be contingent on whether a video service franchisee has complied with the notice requirement. Therefore, I did not include such a requirement. Is that okay?

****NOTE: What if a video service area encompasses more than one municipality? Is that situation possible? What rules should apply in that situation?

****NOTE: The proposal also contains the following definition for the PEG channel provisions, which I did not include in the substitute amendment: "programming" means "content produced or provided by any person, group, governmental agency, or noncommercial public or private agency or organization." In essence, the definition says that programming means programming provided by anybody. I'm not sure why such a definition is necessary, so I did not include it.

****NOTE: I added "except as provided in subd. 2." Also note that I moved the provisions of the proposal into an order that I think makes more logical sense.

- 7 a. Designate the same amount of capacity on its video service network for PEG
8 channels as an incumbent cable operator was required to designate under a cable
9 franchise that was granted to the incumbent cable operator by the municipality and
10 that was in effect on January 1, 2007.

****NOTE: What if a municipality granted franchises to different incumbent cable operators? Is that possible? What rules should apply?

- 11 b. Retransmit to its subscribers the same number of PEG channels as an
12 incumbent cable operator was required to retransmit under a cable franchise that

1 was granted to the incumbent cable operator by the municipality and that was in
2 effect on January 1, 2007.

****NOTE: As noted above, what rule should apply if a municipality granted cable franchises to more than one cable operator?

3 2. If a municipality whose jurisdiction lies within the video service area of a
4 video service franchisee received less than 3 PEG channels from an incumbent cable
5 operator on January 1, 2007, then, under subd. 1., the municipality may require the
6 video service franchisee to designate sufficient capacity on its video service network
7 for no more than 3 PEG channels and retransmit to its subscribers no more than 3
8 PEG channels.

****NOTE: The proposal also includes the following: "A municipality that seeks to add additional capacity shall give a video service franchisee a written notification specifying the number of additional channels to be used, specifying the number of channels in actual use, and verifying that the additional channels requested will be put into actual use." I included some, but not all, of this language in subd. 3.

****NOTE: I deleted a reference to the municipality's designee because I don't think the proposal consistently refers to designees.

9 3. Any time that programming on any PEG channel that a municipality
10 requires a video service franchisee to retransmit under this paragraph exceeds 40
11 hours per week as measured on a quarterly basis, the municipality may require the
12 video service franchisee to designate sufficient capacity on its video service network
13 for one additional PEG channel and retransmit to its subscribers one additional PEG
14 channel. The municipal^{ity} shall provide the video service franchisee with a written
15 notice that specifies the number of PEG channels used by the municipality and
16 verifies that the additional PEG channel will be put into actual use. No later than
17 90 days after receiving the notice, the video service franchisee shall comply with the
18 requirement. The additional PEG channel may not be used for any purpose other
19 than for carrying additional PEG channel programming.

****NOTE: I assume that only one additional PEG channel may be required at a time. The proposal seems ambiguous on this point.

1 (b) *Transmission duties.* 1. If a municipality produces or maintains PEG
2 channel programming in a manner or form that is compatible with a video service
3 franchisee's video service network and that permits the video service franchisee to
4 comply with the requirements of subd. 2., the municipality shall transmit the
5 programming to the video service franchisee in that manner or form. If the
6 municipality does not produce or maintain PEG channel programming in such
7 manner or form, the video service franchisee shall be responsible for any changes in
8 the manner or form of the transmission that are necessary to make PEG channel
9 programming compatible with the technology or protocol used by the video service
10 franchisee to deliver services. If a video service franchisee is required to make such
11 changes to the manner or form of the transmission, the municipality shall provide
12 reasonable access to the video service franchisee that allows the video service
13 franchisee to transmit the PEG channel programming in an economical manner
14 subject to the requirements of subd. 2.

****NOTE: I made various changes to the proposal's version of the above, including moving a prohibition on fees to par. (d) below.

15 2. A video service franchisee shall retransmit PEG channels to its subscribers
16 with visual and audio quality and functionality that is equivalent, from the viewing
17 perspective of the subscriber, to that of commercial channels carried on the video
18 service franchisee's basic cable or video service offerings or service tiers and without
19 the need for any equipment other than the equipment necessary to receive the video
20 service franchisee's basic cable or video service offerings or service tiers.

****NOTE: The proposal refers to providing PEG channel capacity, rather than retransmitting PEG channels. I think my reference to retransmission is more consistent with the rest of the substitute amendment. Let me know if it is okay.

1 3. A video service franchisee shall carry PEG channels on its basic cable or
2 video service. To the extent feasible, PEG channels may not be separated
3 numerically from other channels carried on the video service franchisee's basic cable
4 or video service, and the channel numbers for PEG channels shall be the same
5 channel numbers used by an incumbent cable operator unless prohibited by federal
6 law. After the initial designation of PEG channel numbers, the channel numbers
7 may not be changed without the agreement of the municipality or the municipality's
8 PEG channel manager, unless the change is required by federal law. Each channel
9 shall be capable of carrying a National Television System Committee television
10 signal.

****NOTE: What does "not separated numerically" mean?

11 (c) *Fees prohibited.* A video service franchisee may not charge a municipality,
12 a municipality's PEG channel manager, or a municipality's PEG channel
13 programming providers any fee for complying with this subsection.

****NOTE: I created a definition for a municipality's "PEG channel manager," but I'm not sure whether a municipality's "PEG channel programming provider" is the same entity. If a PEG channel manager and a PEG channel programming provider are the same entity, the reference to PEG channel programming provider should be eliminated.

14 (d) *Interconnection.* Video service franchisees and incumbent cable operators
15 shall negotiate in good faith amongst themselves to interconnect their video service
16 networks, if needed, for the purpose of complying with this subsection.
17 Interconnection may be accomplished by direct cable, microwave link, satellite, or
18 other reasonable method of connection. Video service franchisees and incumbent
19 cable operators shall provide such interconnection on reasonable terms and
20 conditions and may not withhold such interconnection. If video service franchisees
21 and incumbent cable operators cannot reach a mutually acceptable interconnection
22 agreement, a municipality may require an incumbent cable operator to allow a video

1 service franchisee to interconnect its video service network with the incumbent cable
2 operator's video service network at a technically feasible point on their video service
3 networks. If no technically feasible point for interconnection is available, the video
4 service franchisee and incumbent cable operator shall each make an interconnection
5 available to the PEG channel programming originators at their local origination
6 points and shall provide the facilities necessary for the interconnection. The cost of
7 any interconnection shall be borne by a video service franchisee unless otherwise
8 agreed to by the parties. The interconnection required by this paragraph shall be
9 completed within the 90-day deadline specified in par. (a).

****NOTE: How does making one party responsible for cost affect the negotiations?
If there is more than one video service franchisee involved in a negotiation, who bears the
cost?

****NOTE: Should the reference to incumbent cable operator be revised to refer to
a municipally regulated cable operator?

****NOTE: The 90-day deadline in the last sentence doesn't work if a new video
service franchisee doesn't begin to provide service in the municipality until after the
deadline. What deadline should apply in that situation?

****NOTE: For purposes of forfeitures, who is considered to have violated the above
if no agreement is reached before the 90-day deadline?

****NOTE: Should the meaning of "PEG channel programming originator" be
clarified? Is it the same person as a PEG channel programming provider under par. (c)?

10 (e) *PEG channel usage*. PEG channels required by a municipality under this
11 subsection shall be for the exclusive use of the municipality to provide public,
12 education, and government programming, and may be used only for noncommercial
13 purposes, except that advertising, underwriting, or sponsorship recognition may be
14 carried on the channels for the purpose of funding public, education, and government
15 access related activities.

****NOTE: I deleted a reference to "designee."

16 (f) *PEG channel listing*. A video service franchisee shall provide a listing of
17 PEG channels on channel cards and menus provided to subscribers in a manner

equivalent to other channels if the video service franchisee uses such cards and menus. A video service franchisee shall provide a listing of PEG channel programming on its electronic program guide if such a guide is used by the video service franchisee. A municipality shall provide a video service franchisee or an agent designated by a video service franchisee with program schedules and information in a timely manner.

(g) *Programming.* 1. A public, education, and government access programmer is solely responsible for the content that it provides over designated PEG channels. A video service franchisee may not exercise any editorial control over any programming on any PEG channel.

****NOTE: In the 1st sentence, what is a "public, education, and government access programmer"? See also the NOTE following par. (c), as well as the last NOTE following par. (d). Also, what is a "designated" PEG channel? Who designates?

****NOTE: The proposal also refers to "any other channel required by law or a binding agreement with the municipality." I did not include that language because it seems rather broad.

2. A video service franchisee is not be subject to any civil or criminal liability for any program carried on any PEG channel.

(h) *Enforcement.* In an action to enforce this subsection, a court may not prohibit a video service franchisee providing cable or video service or require a video service franchisee to terminate cable or video service.

****NOTE: I changed the proposal's language on the above. Are my changes okay?

(6) **EMERGENCY ALERT SYSTEM.** A video service franchisee shall comply with all applicable requirements of the federal communications commission regarding the distribution and notification of federal, state, and local emergency messages over the emergency alert system that apply to cable operators. A video service franchisee shall provide a requesting municipality with sufficient information regarding how to submit, via telephone or web site listing, a local emergency alert for distribution over

sub^{section}

1 its video service network. To the extent that a municipality requires incumbent cable
2 operators to provide emergency alert system messages or services in excess of the
3 requirements of this paragraph, a video service franchisee shall comply with any
4 such additional requirements within the jurisdiction of the municipality. A video
5 service franchisee may provide a local emergency alert to an area larger than the
6 boundaries of the municipality issuing the emergency alert.

****NOTE: In the 1st sentence, how does one determine what the "applicable" requirements are?

+ site
****NOTE: In the 2nd sentence, it appears that submission of information is limited to telephone or web listing. Is that okay? Also, what does "web listing" mean?

+ site
****NOTE: Is it okay to refer to providing messages or services "in excess" of the requirements of the paragraph, or should that reference be reworded?

7 (7) MUNICIPALITY FEES. (a) *Gross revenue calculation.* 1. 'Generally.' Gross
8 revenue of a video service franchisee consists of all consideration of any kind or
9 nature, including cash, credits, property, and the monetary value of in-kind
10 contributions, received by the video service franchisee for the operation of a cable or
11 video system to provide cable service or video service within the video service
12 franchisee's video service area that is located within the jurisdiction of a
13 municipality.

****NOTE: The above refers to the "monetary value" of in-kind contributions, instead of "in-kind contributions." Note that an issue might arise over how such value is determined.

14 2. 'Inclusions.' Gross revenue of a video service franchisee includes all of the
15 following:

- 16 a. Recurring charges for cable or video service.
- 17 b. Event-based charges for cable or video service, including pay-per-view and
18 video-on-demand charges.
- 19 c. Rental of set top boxes and other cable or video service equipment.

1 d. Service charges related to the provision of cable or video service, including
2 activation, installation, and repair charges.

3 e. Administrative charges related to the provision of cable or video service,
4 including service order and service termination charges.

5 f. Late payment fees or charges, insufficient funds check charges, and other
6 charges assessed to recover the costs of collecting delinquent payments.

7 g. A pro rata portion of all revenue that is derived by the video service
8 franchisee or its affiliates pursuant to regional or national compensation
9 arrangements for advertising, promoting, or exhibiting any products or services, and
10 that is also derived from the operation of the video service franchisee's video service
11 network to provide cable or video service within the municipality's jurisdiction. The
12 pro rata portion shall be determined by dividing the number of the video service
13 franchisee's subscribers in the municipality by the total number of the video service
14 franchisee's subscribers in the regional or national area covered by the compensation
15 arrangement.

****NOTE: Are my changes to the above okay?

16 h. Compensation received by the video service franchisee that is derived from
17 the operation of the video service franchisee's video service network to provide cable
18 or video service with respect to commissions that are received by the video service
19 franchisee as compensation for promoting or exhibiting any products or services on
20 the video service franchisee's video service network, such as a home shopping or
21 similar channel.

****NOTE: I'm not sure what the above means. What does "with respect to" mean?

22 i. Video service franchise fees paid by the video service franchisee.

****NOTE: Why is the above included in the calculation of gross revenue? If the fee itself is based on gross revenue, isn't the result that some portion of gross revenue will be counted double?

1 3. 'Exclusions.' Gross revenue of a video service franchisee does not include any
2 of the following:

3 a. Revenues not actually received, including revenues that are billed.

****NOTE: The proposal gives bad debt as an example of the above, but provides that bad debt is subject to par. (a) 2. f. (regarding late payment fees). I don't think it is necessary to mention bad debt. If the bad debt is not received, then it satisfies the requirements of being billed but not received, and cannot be counted as gross revenue. If it is eventually received, then it can be counted as gross revenue. If late payment fees are also received, they can be counted as gross revenue. You don't have to mention bad debt for the foregoing to apply. In addition, I think the reference to bad debt is confusing.

4 b. Refunds, discounts, or other price adjustments that reduce the amount of
5 gross revenue received by the video service franchisee to the extent the refund,
6 rebate, credit, or discount is attributable to cable or video service.

7 c. The sale of cable or video service for resale to a purchaser that is required
8 to collect a video service franchisee fee from the purchaser's subscribers, but only if
9 the purchaser certifies in writing that the purchaser will resell the service within the
10 jurisdiction of the municipality to which the video service franchise fee is payable
11 and that the purchaser will pay the video service franchise fee to the municipality.

X ****NOTE: Who does the purchaser make the certification to? Who requires the purchaser to collect the fee? Is it a requirement under the terms of sale by a video service franchisee to the purchaser? And why is the above necessary? Won't the purchaser be required to obtain a video service franchise in order to provide the video service to the public, and therefore have to pay its own video service franchise fees?

12 d. Any tax or fee of general applicability imposed upon the subscribers or the
13 transaction by a city, state, federal, or any other governmental entity and collected
14 by the video service franchisee and required to be remitted to the taxing entity,
15 including sales and use taxes.

****NOTE: What does "or the transaction" mean?

16 e. Security deposits collected from subscribers.

1 f. Amounts paid by subscribers to home shopping or similar vendors for
2 merchandise sold through any home shopping channel offered as part of the cable or
3 video service.

4 4. 'Bundled services.' a. Except as provided in subd. 4. b., if a cable or video
5 service is bundled, packaged, or integrated functionally with other services,
6 capabilities, or applications, the portion of the video service franchisee's revenue that
7 is attributable to the other services, capabilities, or applications shall be included in
8 the calculation of the video service franchisee's gross revenue unless the video service
9 franchisee can reasonably identify the division or exclusion of the revenue from its
10 books and records that are kept in the regular course of business.

11 b. Gross revenue of a video service franchisee does not include any revenue
12 received from noncable or nonvideo services, including revenue received from
13 telecommunications services, information services, or the provision of directory or
14 Internet advertising, including yellow pages, white pages, banner advertisement,
15 and electronic publishing, or any other revenues attributed by a video service
16 franchisee to noncable or nonvideo service in accordance with the video service
17 franchisee's books and records kept in the regular course of business and in
18 accordance with any applicable laws, rules, regulations, standards, or orders. This
19 subd. 4. b. applies regardless of whether the noncable or nonvideo services are
20 bundled, packaged, or functionally integrated with cable service or video services.

X ***NOTE: I put together (and reworded) in subd. 4. the proposal's different
provisions regarding bundled services. However, I'm not quite sure how the 2 provisions
are supposed to interrelate. I'm not sure, but won't subd. 4. b. always supercede the subd.
4. a.? If so, can't subd. 4. a. be eliminated? 15 9 6

***NOTE: The proposal refers to services "not classified" as cable or video service.
I assume that means noncable or nonvideo services.

1 5. 'Affiliates.' Revenue of an affiliate of a video service franchisee shall be
2 included in the video service franchisee's gross revenue to the extent the treatment
3 of the revenue as revenue of the affiliate rather than of the video service franchisee
4 has the effect of evading the requirement to pay a video service franchisee fee or PEG
5 support fee.

 ****NOTE: How do you determine whether the treatment of revenue has the
specified effect?

6 (b) *Notice.* No more than 10 days before offering cable or video service in a
7 municipality's jurisdiction, a video service franchisee shall notify the municipality.

8 (c) *Video service franchise fee.* In any municipality in which a video service
9 franchisee offers cable or video service on a commercial basis, the video service
10 franchisee shall be liable for and pay a video service franchisee fee to the
11 municipality. The video service franchise fee shall equal 5% of the video service
12 franchisee's gross revenue or the same as the video service franchise fee paid to the
13 municipality by a municipally regulated cable operator under s. 66.0419 (3).
14 Payment of the video service franchise fee is due on a quarterly basis 45 days after the close
15 of the calendar quarter. If mailed, the video service franchise fee is considered paid
16 on the date it is postmarked. Except as otherwise provided in this section, a
17 municipality may not demand any additional fees or charges from a video service
18 franchisee and may not demand the use of any other calculation method other than
19 allowed under this subsection.

 ****NOTE: Why does the above apply to offering cable or video service on a
"commercial basis"?

 ****NOTE: What if more than one municipally regulated cable operator pays a
franchise fee under s. 66.0419 (3)? Is that possible? If so, how do you determine the
amount of the video service franchise fee? Also, how do you determine whether the video
service franchise fee is 5% or the municipally regulated cable operator's fee? Should it
be the greater or lesser of the one or the other? And should references to the municipally
regulated cable operator's fee refer to the percentage of gross revenue that the

municipally regulated cable operator pays, rather than the amount of the municipally regulated cable operator's fee?

****NOTE: What happens if a fee is based on what a municipally regulated cable operator pays under s. 66.0419(3), and that cable operator subsequently terminates its franchise under s. 66.0419. Should everybody's video service franchise fee be refigured, or do they all stay the same?

****NOTE: The proposal also includes the following: "A municipality shall adopt an ordinance imposing such a fee. The holder's liability for the fee shall commence on the first day of the calendar month that is at least 30 days after the holder receives such ordinance. The ordinance shall be sent by mail, postage prepaid, to the address listed on the holder's application provided to the local unit of government...." Because the statute itself establishes the amount of the fee, as well as the duty to pay the fee, why is it necessary to require a municipality to adopt an ordinance that does the same thing? And why would a municipality have to mail a copy of the ordinance? I don't think that an ordinance is necessary, so I didn't include the proposal's language on this point. Let me know if that is okay.

****NOTE: The last sentence might need clarification so that there is no doubt that fees for public rights-of-way are allowed, which I assume is your intent.

1 (d) *PEG support fee.* 1. A video service franchisee shall, upon request by a
2 municipality in which the video service franchisee provides cable or video service,
3 pay to the municipality or the municipality's PEG channel manager, as support for
4 PEG channels, a PEG support fee equal to not less than one percent of the video
5 service franchisee's gross revenue or the percentage of the video service franchisee's
6 gross revenue that results from performing the following calculation, whichever is
7 greater:

****NOTE: Why "upon request"? Is the fee payable only if the municipality asks for it? If so, how often does the municipality have to request the fee?

****NOTE: Is the language regarding "as support for PEG channels" intended to require that the municipality may only use the fee for such support? If so, should that be stated more clearly?

****NOTE: Should the gross revenue be limited to the revenue generated from providing service within the municipality?

****NOTE: I found the proposal's approach confusing, so I took a different approach. Let me know whether my approach is okay.

8 a. Determining the aggregate annual amount that each incumbent cable
9 operator that provides cable service in the video service franchisee's service area is
10 obligated to pay the municipality or its PEG channel manager under a cable
11 franchise, agreement, or contract in effect on January 1, 2007, including any

✓
1 payments required under sub. (3) (b) 2. b., and including the amount resulting by
2 dividing the total amount of any lump sum payments required to be made over the
3 term of such franchise, contract, or agreement by the number of years of the term of
4 the franchise, contract, or agreement.

****NOTE: I referred to PEG channel manager, instead of designee. Is that okay?

5 b. Determining the aggregate annual amount of gross revenue during the
6 preceding calendar year of each incumbent cable operator specified in subd. 1. a. ✓

7 c. Determining the percentage that results from dividing the amount
8 determined under subd. 1. a. ✓ by the amount determined under subd. 1. b. ✓

9 2. PEG support fees are due on a quarterly basis and must be paid no later than
10 45 days after the close of a calendar quarter. Each payment shall include a statement
11 explaining the basis for the calculation of the PEG support fee. If mailed, the PEG
12 support fee is considered paid on the date it is postmarked.

****NOTE: The proposal also provides: "The liability of [a video service franchisee] for payment of [the PEG support fee] shall commence on the same date as the payment of the [video service franchise fee]" However, the payment of the video service franchise fee is contingent on the date that a video service franchisee receives a copy of the ordinance regarding the video service franchise fee. As noted above, I eliminated the ordinance. Therefore, I need to revise the substitute amendment to address the issue of when the duty to pay the fees begins. Please give me your input on this issue.

13 3. A municipality may require a video service franchisee to provide the
14 municipality or the municipality's PEG channel manager with any information
15 sufficient to calculate the PEG support fee required under this paragraph. ✓

****NOTE: The proposal also allows a municipality to require persons with cable franchises to provide information. However, cable franchisees are regulated under s. 66.0419 and I don't understand why they are mentioned here. Therefore, I did not mention cable franchisees. Let me know if that is okay.

****NOTE: The proposal also refers to requiring providing information sufficient to calculate any credits under "subsection (d) (1)" of the Illinois law. However, the term "credit" is not used in that provision of the Illinois law, so I'm not sure what to do on this point.

1 (e) *Bill itemization.* A video service franchisee may identify and collect the
2 amount of the video service franchise fee or PEG support fee as separate line items
3 on the regular bill of each subscriber.

4 (f) *Accounting.* All determinations and computations under this subsection
5 shall be made pursuant to generally accepted accounting principles.

****NOTE: The proposal also contains the following, which I don't think is necessary:
"Nothing contained in this [subsection] shall be construed to exempt a [video service
franchisee] from any tax that is or may later be imposed by [a municipality], including
any tax that is or may later be required to be paid by or through the [video service
franchisee] with respect to cable or video service. A [video service franchisee] shall not
affect any requirement of [a video service franchisee] with respect to payment of [a
municipality's] simplified municipal telecommunications tax or any other tax as it applies
to any telephone service provided by the [video service franchisee]. A [video service
franchisee] shall not affect any requirement of [a video service franchisee] with respect to
payment of [a municipality's] 911 or E911 fees, taxes, or charges." I don't think the
foregoing is necessary because the substitute amendment does not have the effects that
are prohibited. If it doesn't have the effects, there is no need to prohibit them. However,
if there is a concern that the substitute amendment will have unintended consequences
that you want to prohibit, then perhaps some language will be necessary. Let me know
what you think.

6 (8) AUDITS; PAYMENTS. (a) Upon receiving a notice under sub. (4) (g) 2. that a
7 video service franchisee has received a video service franchise, a municipality shall
8 notify the video service franchisee of the municipality's requirements for the video
9 service franchisee to submit to an audit of its books and records. Such requirements
10 shall be the same as those that apply to municipally regulated cable operators. If the
11 municipality has not issued cable franchises to cable operators, or if the cable
12 franchises that the municipality has issued have been terminated under sub. (3) (b)
13 1. b., such requirements shall be the same as those ^{that} govern appeals by local
14 taxpayers.

****NOTE: The proposal also requires a video service franchisee that is subject to
the same requirements as municipally regulated cable operators to "recompute any
amounts determined to be payable under the requirements of the municipality." I'm not
sure which requirements of the municipality that this directive is supposed to refer to.
Would audit requirements include requirements for recomputing amounts? If so, there's
no need say anything about recomputing amounts. If audit requirements don't include
requirements for recomputing amounts, I'm not sure which recomputation requirements

will
apply. Please let me know what you think and whether any language on this issue should be included in the above.

X
****NOTE: Under Wisconsin law, municipalities collect property taxes and certain other taxes such as room taxes for hotels and motels. Any audit requirements that might apply to those taxes are probably not appear relevant to the fees due under this substitute amendment. Let me know if you want to make any changes regarding this issue.

****NOTE: What if a cable franchise terminates after the municipality gives a video service franchisee notice of the audit requirements? What requirements apply to the video service franchisee and how is the video service franchisee notified of them?

****NOTE: Is it possible that a municipality has issued more than one cable franchise under current law? Could those franchises have different audit requirements? If so, what requirements should apply to a video service franchisee?

1 (b) Acceptance by a municipality of amounts remitted by a video service
2 franchise shall not be construed as an accord that the amounts are correct.

3 (c) Any additional amount due after an audit shall be paid within 30 days after
4 the municipality's submission of an invoice for the sum.

5 (9) REQUIREMENTS TO PROVIDE VIDEO SERVICES. (a) *Discrimination prohibited.*
6 A video service franchisee may not deny access to cable or video service to any
7 potential residential subscribers because of the race or income of the residents in the
8 local area in which the potential subscribers reside.

****NOTE: What does "local area" mean? ✓

9 (b) *Access; generally.* For purposes of this subsection, a video service franchisee
10 provides access to its cable or video service to a household if the video service
11 franchisee is capable of providing cable or video services at the household address
12 using any technology, other than direct-to-home satellite service, that provides
13 ^{see 2} two-way broadband Internet capability, and video programming, content, and
14 functionality which are demonstrably similar to video programming, content, and
15 functionality provided through the video service franchisee's video service system,
16 regardless of whether any customer at the household address has ordered service or
17 whether the owner or landlord or other responsible person has granted access to the
18 household address. If more than one technology is used, access is provided only if the

1 technologies provide similar ² two-way broadband Internet capability and similar
2 video programming.

****NOTE: The above is based on the definition of "access" included in the proposal.
I was a little confused about the definition's last sentence, so please review the changes
that I made to it.

3 (c) *Access; more than 500,000 lines.* If a video service franchisee uses
4 telecommunications facilities to provide cable or video service and has, on the
5 effective date of this paragraph [revisor inserts date], more than 500,000
6 telecommunications access lines in this state, the video service franchisee shall do
7 all of the following:

8 1. Except as provided in subds. 2. and 3., provide access to its cable or video
9 service to a number of households equal to at least 35% ^{percent} of the households in the video
10 service franchisee's telecommunications service area in the state within 3 years after
11 the date the video service franchisee is issued a video service franchise and to a
12 number not less than 50% ^{percent} of such households within 5 years after such date, except
13 that the video service franchisee is not required to meet the 50% ^{percent} requirement under
14 this subdivision until 2 years after at least 15% ^{percent} of the households with access to the
15 video service franchisee's video service subscribe to the service for 6 consecutive
16 months. A video service franchisee's obligation to provide access under this
17 subdivision shall be distributed, as the video service franchisee determines, within
18 three ³ designated market areas in the state and one designated market area shall
19 consist of any ^{1st} first class cities.

****NOTE: I don't understand how the exception in the 1st sentence works.

****NOTE: I don't understand what the last sentence is supposed to accomplish.
Also, the proposal has additional language regarding the last sentence, but some words
appear to be missing, so I checked the Illinois law itself, which provides: "The [video
service franchisee's] obligation to provide such access in the State shall be distributed,
as the [franchisee] determines, within three designated market areas, one in each of the
northeastern, central and southwestern portions of the [franchisee's]
telecommunications service area in the State. The designated market area for the

northeastern portion shall consist of two separate and distinct reporting areas: i) a city with more than 1,000,000 inhabitants, and ii) all other local units of government on a combined basis within such designated market area in which it offers video service." I'm not sure how you want to incorporate the foregoing requirements (which may be unique to Illinois) into Wisconsin law. Please advise.

2. If any state in which the video service franchisee or one of its affiliates provides or seeks to provide cable or video service adopts a law requiring the video service franchisee or an affiliate to provide access to cable or video service to more than 35% of the households in the cable or video provider's service area in that state within 3 years after the video service franchisee or affiliate is allowed to provide cable or video service in that state, the video service franchisee shall provide service in this state to the same percentage of households within 3 years of adoption of such law in that state.

***NOTE: The proposal refers to another state requiring a video service franchisee or affiliate to "offer service." I changed "offer" service to "provide access" to service.

3. If any state in which the video service franchisee or one of its affiliates provides or seeks to provide cable or video service adopts a law requiring the video service franchisee or an affiliate to provide access to cable or video service to more than 35% of its households if less than 15% of the households with access to the video service franchisee's service subscribe to the service for 6 consecutive months, then as a precondition to further build-out, the video service franchisee shall be subject to the same percentage of service subscription in meeting its obligation to provide service to 50% of the households in this state.

***NOTE: I'm not sure what the above means. For example, what does the reference to "precondition to further build-out" mean?

***NOTE: I changed references to "offering" service to "providing access" to service.

4. Within 3 years after receiving a video service franchise, at least 30% of the total households with access to the video service franchisee's cable or video service shall be low-income households. Within each designated market area determined

1 under subd. 1., the video service franchisee's obligation to provide access of its cable
2 or video service to low-income households shall be measured by each exchange in
3 which the video service franchisees chooses to provide cable or video service. The
4 video service franchisee is under no obligation to serve or provide access to an entire
5 exchange, except that, in addition to the statewide obligation to provide low-income
6 access under this subsection, in each exchange in which the video service franchisee
7 chooses to provide cable or video service, the video service franchisee shall provide
8 access to a percentage of low-income households that is at least equal to the
9 percentage of the total low-income households within that exchange.

***NOTE: I don't know what the above is supposed to do, so I don't know if it accomplishes its purpose. For example, under sub. (4) (b) 1., it appears that defining a video service area in terms of an exchange is an option. However, the above appears to require exchanges.

***NOTE: The above (and other requirements) should be clarified so that they are not triggered every 10 years when a video service franchise expires and the video service franchisee obtains a new video service franchise.

10 5. Provide access to broadband service to 90% percent of the households in the video
11 service franchisee's telecommunications service area by December 31, 2008, or pay
12 to the commission, within 30 days of December 31, 2008, a sum of \$15,000,000. The
13 commission shall deposit any payment made under this subdivision in the universal
14 service fund.

15 (d) Access; 250,000 to 500,000 lines. If a video service franchisee uses
16 telecommunications facilities to provide cable or video service and has, on the
17 effective date of this paragraph [revisor inserts date], more than 250,000, but no
18 more than 500,000, telecommunications access lines in this state, the video service
19 franchisee shall do all of the following:

20 1. Provide access to its cable or video service to a number of households equal
21 percent to at least 25% of its telecommunications access lines in this state within 3 years after

Percent
1 the date the video service franchisee receives a video service franchise and to a
2 number not less than 35% of such households within 5 years after the date the video
3 service franchisee receives a video service franchise, except that the video service
4 franchisee is not required to meet the 35% requirement under this subdivision until
5 2 years after at least 15% of the households with access to the video service
6 franchisee's video service subscribe to the service for 6 consecutive months. The
7 video service franchisee's obligation to provide such access in the state shall be
8 distributed, as the video service franchisee determines, within three³ different
9 designated market areas.

****NOTE: I don't understand how the exception in the 1st sentence is supposed to work. Also, what does the last sentence mean?

10 2. Within 3 years after receiving a video service franchise, at least 30% of the
11 total households with access to the video service franchisee's cable or video service
12 shall be low-income households. Within each designated market area determined
13 under subd. 1., the video service franchisee's obligation to offer service to low-income
14 households shall be measured by each exchange in which the video service franchisee
15 chooses to provide cable or video service. The video service franchisee is under no
16 obligation to serve or provide access to an entire exchange, except that, in addition
17 to the statewide obligation to provide low-income access under this subsection, in
18 each exchange in which the video service franchisee chooses to provide cable or video
19 service, the video service franchisee shall provide access to a percentage of
20 low-income households that is at least equal to the percentage of the total
21 low-income households within that exchange.

****NOTE: As noted above, the reference to exchanges is confusing.

22 (e) *Access; others.* A video service franchisee, other than a video service
23 franchise specified in par. (c) (intro.) or (d) (intro.), shall do all of the following:

1. Provide access to one or more exchanges or to municipalities and shall provide access to their cable or video service to a number of households equal to 35% of the households in the exchange or municipality within 3 years after receiving a video service franchise and to a number not less than 50% of such households within 5 years after receiving a video service franchise, except that if the video service franchisee is an incumbent cable operator or a successor-in-interest to an incumbent cable operator, the video service franchisee shall provide access to cable or video services within the jurisdiction of a municipality at the same levels required by the municipality on the effective date of this subdivision [revisor inserts date].

***NOTE: The above is confusing and I'm not ^{sure} what is required.

2. Within 3 years after receiving a video service franchise, at least 30% of the total households with access to the video service franchisee's cable or video service shall be low-income households. Within each designated exchange or municipality specified in subd. 1., the video service franchisee's obligation to offer service to low-income households shall be measured by each exchange or municipality in which the video service franchisee chooses to provide cable or video service. Except as provided in subd. 1., the video service franchisee is under no obligation to serve or provide access to an entire exchange or municipality, except that, in addition to the statewide obligation to provide low-income access provided by this subsection, in each exchange or municipality in which the video service franchisee chooses to provide cable or video service, the video service franchisee shall provide access to a percentage of low-income households that is at least equal to the percentage of the total low-income households within that exchange or municipality.

***NOTE: The above is confusing and I'm not ^{sure} what is required. The last sentence uses "except" twice and seems particularly confusing.

1 (f) *Access; mitigating factors.* 1. In any investigation or complaint regarding
2 an allegation that a video service franchisee has failed to comply with this
3 subsection, the following factors may be considered in justification or mitigation or
4 as justification for an extension of time to comply with this subsection:

****NOTE: Justification or mitigation for what purpose? What is the consequence?
Who approves the justification or mitigation? A court or DOJ? Are the factors a defense
to liability for violation? If so, why not limit to a court proceeding?

5 a. The inability to obtain access to public and private rights-of-way under
6 reasonable terms and conditions.

7 b. Barriers to competition arising from existing exclusive service arrangements
8 in developments or buildings.

9 c. The inability to obtain access to developments or buildings using reasonable
10 technical solutions under commercially reasonable terms and conditions.

11 d. Natural disasters.

12 e. Other factors beyond the control of the video service franchisee.

13 2. If a video service franchisee relies on a factor or factors specified in subd. 1.
14 in response to an investigation or complaint specified in subd. 1. (intro.), the video
15 service franchisee shall identify the factor or factors, the substantial effort the video
16 service franchisee has taken to comply with this subsection, and the number of days
17 the video service franchisee has been delayed or the requirements the video service
18 franchisee cannot perform as a consequence of the factor or factors.

****NOTE: To whom does a video service franchisee identify the required items?
What is the effect of a successful identification?

19 3. The department of justice or a court may consider the factors specified in
20 subd. 1. in determining whether a video service franchisee has violated this
21 subsection.

***NOTE: The above is confusing. Either a video franchisee violates the subsection, or it doesn't. If a factor applies, the factor does not negate the fact that a violation occurred. Depending on your intent, the above should be rephrased.

(g) *Video service franchisee reports.* A video service franchisee shall, no later than April 1, 2009, and annually no later than April 1 thereafter, report to the commission for each of the service areas as described in pars. (c), (d), and (e) in which the video service franchisee provides access to its video service in the state, all of the following information:

***NOTE: The reference to service areas should be clarified.

1. The number of households in the video service franchisee's telecommunications service area within each designated market area determined under par. (c) 1. or (d) 1. or exchange or municipality as described in par. (e) in which it offers video service.

***NOTE: The reference to market areas, exchanges, and municipalities should be clarified.

2. The number of households in the video service franchisee's telecommunications service area within each designated market area determined under par. (c) 1. or (d) 1. or exchange or municipality as described in par. (e) that are offered access to video service by the video service franchisee.

***NOTE: The reference to market areas, exchanges, and municipalities should be clarified.

3. The number of households in the video service franchisee's telecommunications service area in the state.

***NOTE: Not all video service franchisees will have a "telecommunications service area." Therefore, the above should be clarified.

4. The number of households in the video service franchisee's telecommunications service area in the state that are offered access to video service by the video service franchisee.

***NOTE: Same issue as above.

1 5. The number of low-income households in the video service franchisee's
2 telecommunications service area within each designated market area determined
3 under par. (c) 1. or (d) 1., as further identified in terms of exchanges, or exchange or
4 municipality as described in par. (e), in which it offers video service

****NOTE: The above should be clarified.

5 6. The number of low-income households in the video service franchisee's
6 telecommunications service area within each designated market area determined
7 under par. (c) 1. or (d) 1., as further identified in terms of exchanges, or exchange or
8 municipality as described in par. (e) in the state, that are offered access to video
9 service by the video service franchisee.

****NOTE: Same issues as above.

10 7. The number of low-income households in the video service franchisee's
11 telecommunications service area in the state.

****NOTE: Same issue regarding telecommunications service area as noted above.

12 8. The number of low-income households in the video service franchisee's
13 telecommunications service area in the state that are offered access to video service
14 by the video service franchisee.

****NOTE: Same issue noted above.

15 (h) *Commission reports.* The commission, within 30 days of receiving the first
16 report from video service franchisees under par. (g), and annually no later than July
17 1 thereafter, shall submit to the appropriate standing committees of the legislature
18 under s. 13.172 (3) a report that includes, based on year-end data, the information
19 submitted by video service franchisees pursuant to par. (g). The commission shall
20 make this report available to any member of the public or any municipality upon
21 request, except as provided under sub. (4) (d), and except that no individually
22 identifiable customer information shall be subject to public disclosure.

10 (B) CS

1 (10) **Enforcement.** (a) The department of justice may investigate possible
2 violations of this section by video service franchisees. If the department of justice
3 determines that there is a reason to believe that a video service franchisee has
4 violated or is about to violate this section, the department of justice may bring an
5 action against the video service franchisee to obtain, except as provided in sub. (5)
6 (h), injunctive relief and civil penalties for any act, policy, or practice by the video
7 service franchisee that violates this section.

****NOTE: The proposal also contains the following: "The department of justice is responsible for administering and ensuring compliance with this section, except that nothing in this section shall deprive municipalities of the right to enforce applicable rights and obligations." The language regarding DOJ is not necessary. As for municipalities, they don't enforce s. 66.0420, so why mention them?

****NOTE: The proposal also includes language about DOJ's subpoena power. I don't think that language is necessary because DOJ's general subpoena power is expressed under current law in s. 885.01.

****NOTE: The proposal also includes the following language, which appears to be unique to Illinois law, so I did not include it: "If a court orders a holder to make payments to the Attorney General and the payments are to be used for the operations of the Office of the Attorney General or if a holder agrees to make payments to the Attorney General for the operations of the Office of the Attorney General as part of an Assurance of Voluntary Compliance, then the moneys paid under any of the conditions described in this subsection shall be deposited into the Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund. Moneys in the Fund shall be used, subject to appropriation, for the performance of any function pertaining to the exercise of the duties to the Attorney General including, but not limited to, enforcement of any law of this State and conducting public education programs; however, any moneys in the Fund that are required by the court to be used for a particular purpose shall be used for that purpose."

8 (b) A video service franchisee's video service franchise may be suspended or
9 revoked if the video service franchisee fails to comply with this section after a
10 reasonable time to achieve compliance has passed.

****NOTE: Does the above mean that DOJ, rather than the PSC, can suspend or revoke a franchise? What procedure should apply? Is court action necessary? Also, who determines what constitutes a reasonable time to achieve compliance? Can a video service franchisee litigate that issue?

CS No (B)

11 (11) **Forfeitures.** (a) Subject to par. (b):

12 1. A video service franchisee that violates this section or any provision of its
13 video service franchise shall forfeit no more than \$30,000 for each violation, or

1 .00825% of the video service franchisee's gross revenue, as calculated under sub. (7)
2 (a), whichever is greater. Each violation of this section is a separate violation, except
3 that if the same act or omission violates more than one provision of this section, only
4 one forfeiture may be imposed for such act or omission. Each day that a violation
5 continues is a separate violation, except that, if the violation was not intentional, did
6 not create substantial risk to the safety of the video service franchisee's employees
7 or customers or the public, and was not intended to cause economic benefits to accrue
8 to the video service franchisee, the forfeiture for a continuing violation may not
9 exceed \$500,000 per year.

***NOTE: How does a video service franchisee violate a provision of the video service franchisee?

10 2. A video service franchisee that violates sub. (9) shall, in addition to the
11 forfeiture under subd. 1., forfeit an amount not exceeding 3% of the video service
12 franchisee's total monthly gross revenue, as calculated under sub. (7) (a), for each
13 month from the date of the violation until the date that compliance is achieved.

x a - ***NOTE: Although the proposal refers to a fine instead of a forfeiture, other provisions of the proposal lead me to conclude that the above should refer to a forfeiture. The difference is that a fine is a criminal matter with a higher standard of proof than a forfeiture, which is a civil matter.

***NOTE: The proposal also includes the following, which I do not think is necessary: "Nothing in this section shall limit or affect the powers of the Attorney General to enforce the current consumer protection law."

+ d - ***NOTE: The proposal also includes the following: "Except as otherwise provided in this section, this section shall be enforced only by a court of competent jurisdiction." I'm not sure what the foregoing is supposed to accomplish. Perhaps the intent is to prohibit the PSC from taking administrative action? If so, such a prohibition should be stated more clearly. Otherwise, I don't think the foregoing is necessary.

14 (b) A court may impose a forfeiture under par. (a) only if the department of justice
15 has given the video service franchisee notice of the violation and the opportunity to
16 remedy the violation within 30 days after receipt of the notice and the video service
17 franchisee has failed to remedy the violation.